

Property Tax Bureau
Informational Guideline Release (IGR) No. 02-207
August 2002

(Supplements IGR 02-206)

APPLICATIONS FOR APPROVAL OF TAX ABATEMENTS
FOR
AFFORDABLE HOUSING DEVELOPERS

(G.L. Ch. 58 §8C)

This Informational Guideline Release (IGR) explains the standards and procedures by which the Commissioner of Revenue will approve abatements of outstanding property taxes contained in tax agreements with developers of affordable housing. It also includes the application form that local officials must use when applying for approval of affordable housing abatements.

Topical Index Key:

Abatements and Appeals

Distribution:

Assessors
Collectors
Treasurers
Accountants/Auditors
Finance Directors
Selectmen/Mayors
City/Town Managers/Exec. Secys.
City Solicitors/Town Counsels

TABLE OF CONTENTS

APPROVAL OF TAX ABATEMENTS FOR AFFORDABLE HOUSING DEVELOPERS

Page 1

GUIDELINES:

I.	TAX AGREEMENTS	1
A.	Property	1
1.	Current Use	1
2.	Developed Use	2
a.	Affordable Housing	2
b.	Mixed Use	2
(1)	Primary Use	2
(2)	Compliance	2
B.	Developer	3
C.	Scope	4
1.	Outstanding Taxes	4
a.	Post agreement/acquisition Municipal Taxes	4
b.	District Taxes	4
c.	Municipal and Charges	4
2.	Minimum Terms	5
3.	Proposed Abatement	5
D.	Signature	5
II.	TAX ABATEMENTS	6
A.	Standards	6
1.	Payments to Acquire Title	6
a.	Definitions	6
b.	Assessed Value Substantially More than Liens	7
c.	Assessed Value Not Substantially More than Liens	8
2.	Approval Pending Acquisition	8
3.	Maximum Abatement	8
4.	Certifications of Eligibility	9
a.	Mixed-use Developments	9
b.	Eligible Developer	9
c.	Purchase Price	9
5.	Payment of Unabated Taxes	9
B.	Approval	10
1.	Applicant	10
2.	Format	10
3.	Content	10
4.	Action	10
III.	APPROVED ABATEMENTS	11
A.	Deadline	11
B.	Procedure	11
C.	Recordkeeping	11

ATTACHMENT

Application for Approval of Tax Abatement for Affordable Housing Developer

(Supplements IGR 02-206)

APPLICATIONS FOR APPROVAL OF TAX ABATEMENTS
FOR
AFFORDABLE HOUSING DEVELOPERS

(G.L. Ch. 58 §8C)

Cities and towns that accept local option G.L. Ch. 58 §8C may enter into agreements with developers of affordable housing for the payment of outstanding property taxes, including abatement of an amount that makes developing the site economically feasible. A municipality that accepts the statute must first adopt an implementation by-law or ordinance specifying the method for negotiating and approving the agreements. Abatements must be approved by the Commissioner of Revenue and are limited to 75% of outstanding real estate taxes and 100% of accrued interest and collection costs. For a general overview of this option, see Property Tax Bureau IGR 02-206, *Tax Agreements for Affordable Housing Developers and Options for Tax Title Foreclosure* (April 2002).

These guidelines set out the standards and procedures that govern abatements included in tax agreements with affordable housing developers.

GUIDELINES:

I. TAX AGREEMENTS

Affordable housing tax agreements must meet the minimum requirements explained in this section.

A. Property

1. Current Use

The site covered by the agreement may contain one or more taxable parcels. The parcels may be vacant or improved.

2. Developed Use

The site must be developed for (1) affordable housing use only or (2) mixed affordable housing and commercial use.

a. Affordable Housing

Affordable housing is housing (1) owned by or rented to families or individuals with household income at time of initial occupancy that meets certain income standards, and (2) subject to a recorded affordable housing restriction of at least 45 years, including resale restrictions imposed to maintain its affordability on a long-term basis. G.L. Ch. 60 §1.

Household income cannot exceed 120 per cent of the area wide median income determined by the United States Department of Housing and Urban Development (HUD) as adjusted for family size. Subsequent owners and renters must also meet that income standard at initial occupancy.

b. Mixed-Use

(1) Primary Use

Affordable housing must be the primary use of any mixed-use development. The site may include commercial uses, but not market-rate housing. Primary use means that more than 50% of the floor space of the improvements on the site must be devoted to affordable housing. This condition and definition of primary use must be included in the agreement, along with plans showing the percentage of floor space devoted to affordable housing use. Common areas, such as floor space used for heating, air conditioning or storage, are to be prorated and allocated to the affordable housing and other uses.

(2) Compliance

No agreements covering a mixed-use development may be made unless:

- (a) The municipality's implementation by-law or ordinance provides that no building permits or certificates of occupancy may be issued unless the building inspector determines that the development of the site conforms to the primary use requirement set forth in these guidelines.
- (b) The municipality's implementation by-law or ordinance and the agreement provide, at a minimum, that if the development later becomes non-conforming during the period covered by the agreement, or within 20 years of its effective date, whichever period is shorter, the certificates of occupancy for the commercial space shall be revoked unless the amount of real estate taxes abated pursuant to the agreement are repaid.

B. Developer

The agreement is with the person or entity planning to develop the site as affordable housing or for affordable housing and commercial purposes, *i.e.*, the developer. The developer may or may not own the site at the time the agreement is made, but cannot be personally liable for any of the outstanding real estate taxes that are the subject matter of the agreement, *i.e.*, cannot be the owner assessed the taxes.

The developer must also meet the same standards that apply to purchasers of tax possession property under G.L. Ch. 60 §77B. This means the developer cannot be delinquent on any property taxes, or have had any arson or insurance fraud convictions, and must submit an affidavit of compliance with these standards at the time the agreement is made.

C. Scope

1. Outstanding Taxes

The agreement may cover the payment and abatement of municipal real estate taxes outstanding at the time the agreement is made, or the developer acquires title, whichever occurs first. This means unpaid installment payments of the city or town real estate tax assessed for any fiscal year that are overdue, *i.e.*, installments on which interest has accrued by law. It also includes all accrued interest and collection costs (such as demand charges and recording and advertising costs for tax takings) on those taxes, as of the agreement or acquisition date, whichever applies.

The agreement may not apply to the payment and abatement of unpaid:

- a. Municipal real estate tax installment payments that first accrue interest after the agreement or acquisition date, whichever applies, and interest and collection costs that accrue on those taxes.
 - (1) Where the developer has acquired the site before the agreement is made, the developer must have timely paid all post-acquisition installment payments. If not, the developer is considered delinquent on property taxes and therefore, is not eligible to enter into an agreement. See Section I-B above.
 - (2) Where the developer is acquiring the site after the agreement is made, the developer must pay any post-agreement installment payments, including accrued interest and collection costs, at the time the property is acquired. No abatement may be granted unless and until these post-agreement taxes have been paid. See Section II-A-2 below.
- b. District real estate taxes.
- c. Municipal and district charges that are liens on the site, *e.g.*, unpaid water or sewer betterments or user charges.

2. Minimum Terms

The agreement must specify at a minimum:

- The number of affordable housing units to be developed, including the percentage of floor space devoted to affordable housing in any mixed-use development.
- The amount owed by fiscal year and by taxes, interest and collection costs.
- The amount to be abated by fiscal year and by taxes, interest and collection costs.
- The balance to be paid by the developer.
- The monthly or other schedule for paying the balance.
- The final payment date.
- The rate of interest that will accrue, if any, on the unpaid balance.
- The penalty for late payments, if any.

3. Proposed Abatement

The agreement must expressly provide that any abatement is subject to the approval of the Department of Revenue (DOR) in accordance with G.L. Ch. 58 §8C. If the developer does not own the site at the time the agreement is made, it must also provide that any abatement is subject to the developer's acquisition in compliance with the terms and conditions of the agreement.

D. Signature

The agreement must be signed by the local official(s) designated in the implementation by-law or ordinance (the municipal signatory) and the developer and notarized. The city or town clerk must attest that the official(s) signing on behalf of the municipality is the signatory designated by the by-law or ordinance.

A copy of the signed agreement must be provided to the (1) developer, (2) city council or board of selectmen, (3) Department of Housing and Community Development (DHCD) and (4) DOR.

II. TAX ABATEMENTS

A. Standards

1. Payments to Acquire Title

Assessed owners, mortgagees and others with interests in the site subordinate to the municipality's tax lien or tax title may not receive more than the amounts set forth in this section in return for surrendering or conveying their interests in the property to the developer. This is to prevent unjust enrichment to delinquent taxpayers at the expense of other municipal taxpayers and to ensure that the tax revenue foregone by the municipality subsidizes affordable housing and community development.

The agreement must include a certification by the developer under the pains and penalties of perjury that the total consideration to be paid the delinquent owner and all others with interests in the property will not exceed the amount authorized by these guidelines.

a. Definitions

The following definitions apply for the purpose of determining the amount the developer may pay to acquire the property.

(1) Purchase Price

The *purchase price* of the property is the total payments made to all parties with subordinate interests. Subordinate interests are all interests other than municipal liens.

If a developer acquires property subject to an existing interest, the value of that interest is treated as a payment for purposes of determining the purchase price. For example, if a developer pays the owner of the property \$200,000 to convey title, without retiring an existing mortgage that would cost \$100,000 to discharge on the date title passes, the purchase price is \$300,000.

(2) Municipal Liens

Municipal liens means liens for all (1) municipal and district real estate taxes, (2) municipal and district charges for which liens exist, and (3) accrued interest and collection costs on those taxes and charges, outstanding at the time the agreement is made.

b. Assessed Value Substantially More than Liens

If the total *municipal liens* outstanding are less than half the current assessed valuation of the property, the *purchase price* cannot exceed the *fair cash value* of the property less the amount of liens before any abatement authorized under the agreement.

The *fair cash value* of the property is presumed to be no more than 10% above its current assessed valuation. A higher amount than this presumptive ceiling on the fair cash value may be used to determine the maximum purchase price only if (1) the higher amount is substantiated by an appraisal from a real estate appraiser licensed by the board of registration of real estate appraisers, and (2) the assessors agree in writing that the higher amount is a reasonable estimate of the current fair cash value of the property.

EXAMPLE

A parcel with a current assessed valuation of \$300,000 has \$100,000 in outstanding municipal liens. Without an appraisal, the formula for calculating the maximum purchase price is:

1.	Assessed valuation		\$300,000
2.	Presumptive fair cash valuation ($\$300,000 \times 1.10$)	=	330,000
3.	<i>Less</i> municipal liens	--	100,000
4.	Maximum purchase price	=	\$230,000

c. Assessed Value Not Substantially More than Liens

If the total *municipal liens* outstanding are one half or more of the current assessed valuation of the property, the assessors must inspect the property and then reapply their valuation schedules or models to determine the valuation of the property in its current condition. The *fair cash value* of the property is presumed to be no more than 10% above this redetermined value unless a higher amount is established by an appraisal in the manner set forth in Section II-A-1-b above.

(1) Liens Exceed Fair Cash Value

If the total *municipal liens* exceed the *fair cash value*, the developer may not pay any party with a subordinate interest more than \$1,000 to convey the interest.

(2) Fair Cash Value Exceeds Liens

If the *fair cash value* exceeds the total *municipal liens*, then the maximum amount the developer may pay all parties with subordinate interests in the property is determined according to the formula set out in Section II-A-1-b above.

2. Approval Pending Acquisition

The municipality may request approval of the proposed abatement before the developer has acquired the property. Assessors may not process any abatement, however, until the municipal signatory certifies to them that the developer has (1) acquired all parcels constituting the site, (2) paid any post-agreement taxes required under Section I-C-1-a-(2) of these guidelines, and (3) complied with any other pre-conditions in the agreement.

3. Maximum Abatement

The proposed abatement cannot exceed 75% of the outstanding real estate taxes and 100% of the outstanding interest and collection costs. If the site consists of more than one parcel, these limits apply to the total amount owed for all parcels.

4. Certifications of Eligibility

The municipal signatory must certify compliance with the following eligibility standards before an abatement can be approved by DOR and granted by the assessors.

a. Mixed-use Developments

If the agreement covers a mixed-use development, (1) the building inspector certified that the plans demonstrate that the primary use of the development will be for housing as defined in these guidelines and (2) the municipality's implementation by-law or ordinance and the agreement provide for the compliance sanctions set forth in these guidelines. See Section I-A-2-b above.

b. Eligible Developer

The developer submitted an affidavit of compliance with the requirements of G.L. Ch. 60 §77B regarding property tax delinquency and arson or insurance fraud convictions at the time the agreement was made. See Section I-B above.

c. Purchase Price

The developer paid no more than the purchase price allowed by these guidelines to acquire the site. See Section II-A-1 above.

If the site has not been acquired at the time the proposed abatement is submitted for approval, the agreement contains the developer's (1) certification that the purchase price will not exceed the amount allowed by these guidelines and (2) acknowledgement that no abatement will be granted until the municipal signatory certifies to the assessors that this and all other pre-conditions have been met. See Sections II-A-1 and 2 above.

5. Payment of Unabated Taxes

The developer must pay the amount of unabated outstanding taxes, interest and collection costs in accordance with the repayment terms and conditions contained in the agreement. The obligation and lien for unabated taxes remains subject to those provisions.

B. Approval

1. Applicant

The municipal signatory must apply for approval of the proposed abatement.

2. Format

Applications for approval of proposed abatements must be submitted in the format shown in PTB Form 58.8C, *Application for Approval of Tax Abatement for Affordable Housing Developer* (Attached). This form will also be used to notify the municipality of the action taken by DOR on the application.

The application form may be generated electronically. **However, the first page of any computer-generated application form must be formatted so that the two “DOR USE ONLY” sections are located in the same place and are of at least the same size.**

3. Content

Applications must include all of the information and certifications specified in Form 58.8C. If a request for a particular developer involves more than one parcel, the municipality must submit a separate application form for each parcel and cross-reference the applications in *Section A Developer, e.g., “1 of 2” and “2 of 2.”*

4. Action

The application form will be used to notify the municipality of the action taken on the request. For reference purposes, each application will be assigned a file number that indicates the calendar year and chronological order of receipt by the Property Tax Bureau. After review of the application for compliance with abatement approval standards, the action taken will be recorded on the form. It will be signed by the Deputy Commissioner of the Division of Local Services and returned to the municipal signatory.

If the application is not acted on within 30 days of its receipt, it is deemed approved and the assessors may grant the proposed abatement in accordance with the terms and conditions of the agreement. Because of this time constraint, incomplete applications will automatically be denied, but may be resubmitted with the required information. A new 30-day period will apply to the resubmitted application.

III. APPROVED ABATEMENTS

A. Deadline

The assessors must grant an approved abatement within two years of the action date shown in the returned application. If not granted within that period, the approval must be renewed before the taxes may be abated.

B. Procedure

Affordable housing abatements should be processed in the same manner and using the same forms as other abatements of real estate taxes. The assessors' records should cite "G.L. Ch. 58 §8C" as the authority under which the abatement is granted, however, and should reference the Property Tax Bureau file number assigned to the application in order to maintain a clear audit trail. Every abatement granted must also be accompanied by a written statement by the assessors certifying under pains and penalties of perjury that all requirements established by DOR for granting the abatement have been followed.

Abated taxes are charged to the overlay for the fiscal year to which the taxes relate. Accrued interest and collection costs that are waived under the agreement are simply unrealized revenue.

C. Recordkeeping

Assessors must retain the returned application and all supporting documentation, including the municipal signatory's certifications, for the term of the agreement, or the period required under the Assessors' Records Disposal Schedule issued by the state Supervisor of Public Records for G.L. Ch. 58 §8 abatement documents, whichever is longer.

Send to:
Property Tax Bureau
Division of Local Services
P.O. Box 9490
Boston MA 02205-9490
FAX (617) 626-2330
PTB Form 58.8C

**APPLICATION FOR APPROVAL
OF TAX ABATEMENT FOR
AFFORDABLE HOUSING DEVELOPER**
General Laws Chapter 58 §8C

RETAIN PER IGR 02-207 Section III-C

DOR USE ONLY

File No.

APPLICATION FROM CITY/TOWN OF _____

Application Date _____

INSTRUCTIONS: Complete **BOTH** sides of the application. Submit **separate** applications for **each parcel** covered by agreement with developer and cross-reference the applications in Section A (e.g., 1 of 2, 2 of 2).

A. DEVELOPER.

Name
Mailing address

B. PARCEL.

Address/Location	Parcel ID
Does developer own the parcel? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, state date acquired.	

C. MUNICIPAL SIGNATORY. Must be signed by local official(s) designated by by-law or ordinance to sign G.L. Ch. 58 §8C tax agreements. *Signature certifies that all information is true and correct and proposed abatement complies with G.L. Ch. 58 §8C and DOR guidelines.*

Name	Title	Date
Name	Title	Date
Name	Title	Date
Name	Title	Date

YOU MUST ALSO COMPLETE SECTIONS D – G ON REVERSE SIDE

DOR USE ONLY

☐ Approved

FOR COMMISSIONER OF REVENUE

☐ Deemed approved

☐ Denied (explanation attached)

Deputy Commissioner
Division of Local Services

Date *

* Abatement must be granted within 2 years of this date.

D. ASSESSMENT INFORMATION. State information shown in the assessors' records for each fiscal year covered by the agreement.

<i>Fiscal Year</i>	<i>Assessed Person/Entity</i>	<i>Class Code</i>	<i>Assessed Value</i>	<i>Real Estate Tax Assessed</i>

Continue on attachment in same format as necessary

E. PROPOSED ABATEMENT. State amounts specified in the agreement.

Is the parcel in tax title? ☐ Yes ☐ No

<i>Fiscal Year</i>	AMOUNT OUTSTANDING			PROPOSED ABATEMENT			
	<i>Taxes</i>	<i>Interest</i>	<i>Collection Costs</i>	<i>Taxes</i>	<i>Interest</i>	<i>Collection Costs</i>	<i>Total</i>
						TOTAL	

Continue on attachment in same format as necessary

F. ELIGIBILITY STANDARDS. The municipal signatory certifies that the proposed abatement complies with DOR eligibility standards.

1. Did developer submit affidavit of compliance with G.L. Ch. 60 §77B regarding property tax delinquency and arson or fraud convictions? ☐ Yes ☐ No
2. Has developer acquired all parcels covered by the agreement? ☐ Yes ☐ No
 - 2.a. If answer to 2 is yes, did developer pay more than maximum amount allowed by DOR guidelines to acquire title to the parcels? ☐ Yes ☐ No
 - 2.b. If answer to 2 is no, does agreement contain developer's certification that purchase price will not exceed that amount? ☐ Yes ☐ No
3. Will site be developed for mixed affordable housing and commercial use? ☐ Yes ☐ No
 - 3.a. If answer to 3 is yes, did building inspector certify that building plans demonstrate conformance to requirement that the primary use of the development is housing as defined by DOR guidelines? ☐ Yes ☐ No
 - 3.b. If answer to 3 is yes, do implementation by-law/ordinance and agreement provide for revocation of commercial occupancy permits if development becomes non-conforming unless abated taxes are repaid? ☐ Yes ☐ No

G. MUNICIPAL CONTACT. Provide name and telephone number of municipal official to contact if there are questions on application.